

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MUR 6792
5 Sean Eldridge)
6 Sean Eldridge for Congress and Michael Oates)
7 in his official capacity as treasurer)
8 Hudson Valley Economic Development)
9 Corporation)

10
11 **SECOND GENERAL COUNSEL'S REPORT**

12
13 **I. ACTIONS RECOMMENDED**

14 We recommend that the Commission: (1) find reason to believe that Sean Eldridge for
15 Congress and Michael Oates in his official capacity as treasurer ("Committee") violated
16 52 U.S.C. § 30104(b); (2) enter into pre-probable cause conciliation with Sean Eldridge, Sean
17 Eldridge for Congress and Michael Oates in his official capacity as treasurer, and Hudson Valley
18 Economic Development Corporation; (3) approve the attached Factual and Legal Analysis;
19 (4) approve the attached conciliation agreements; and (5) approve the appropriate letters.

20 **II. BACKGROUND**

21 The Commission previously found reason to believe that the Hudson Valley Economic
22 Development Corporation ("HVEDC"), Sean Eldridge, and Sean Eldridge for Congress and
23 Michael Oates in his official capacity as treasurer (the "Committee") each violated 52 U.S.C.
24 § 30118(a) because it appeared that the Eldridge campaign used footage belonging to HVEDC in
25 its "Why I'm Running" advertisement¹ and that HVEDC provided the footage to the campaign

¹ See *Sean Eldridge: Why I'm Running*, SEAN ELDRIDGE YOUTUBE CHANNEL (Sept. 22, 2013), <https://www.youtube.com/watch?v=FKsq4d889lk>. As described in the Factual and Legal Analysis, the "Why I'm Running" advertisement served as a campaign announcement and biographical introduction of Eldridge that focused on his business experience, including his role as founder and President of Hudson River Ventures and co-founder of the Hudson Valley Advanced Manufacturing Center at SUNY New Paltz and its 3D printing initiative. See Factual and Legal Analysis ("F&LA") for Eldridge, Committee and HVEDC at 2-4, MUR 6792.

1 free of charge.² The footage at issue was of HVEDC President and CEO Laurence Gottlieb that
2 had been used months earlier in an HVEDC advertisement.³

3 The Commission commenced an investigation to determine the source and cost of the
4 footage and whether the Committee paid for the footage. The full results of our investigation are
5 detailed below, along with our recommendation to proceed to pre-probable cause conciliation
6 with Respondents.

7 III. SUMMARY OF INVESTIGATION

8 During the investigation, Respondents provided a copy of the raw unedited footage of
9 Gottlieb that included the portion Eldridge used in his "Why I'm Running" advertisement.⁴ The
10 unedited footage is two minutes long and shows Gottlieb in front of a green-colored screen
11 delivering scripted lines to the camera; Gottlieb stops and restarts four times on camera before
12 delivering an error-free version of his lines.⁵

² See Certification, MUR 6792 (Sean Eldridge) (Apr. 28, 2016); F&LA for Eldridge, Committee and HVEDC at 8-9.

³ F&LA for Eldridge, Committee and HVEDC at 3-4.

⁴ See Letters from Marc E. Elias (Sept. 9, 2016 and Sept. 19, 2016). Respondents were all represented by the same counsel and made joint submissions during our investigation. Respondents were initially unable to locate the HVEDC footage and were hesitant about providing the names or contact information of individuals involved in the creation and production of the footage. After some delay, they ultimately provided the footage and the name of a representative from the media firm that created the advertisement, SKDKnickerbocker, Inc.

⁵ A copy of the footage is available in the Voting Ballot Matters folder for this matter. At the reason to believe stage it appeared that the amount of footage the Eldridge campaign may have received from HVEDC was larger because Eldridge's advertisement also contained footage of 3D printing process that appeared similar to the footage that was used in HVEDC's own advertisement. HVEDC F&LA at 8; Eldridge and Committee F&LA at 9. The investigation shows, however, that the footage of the 3D printing process used in the Eldridge advertisement was stock footage obtained through online sources and was not footage that belonged to HVEDC. Jennifer Cunningham Aff. ¶ 5 (explaining that the media firm that created the advertisement obtained the stock footage through online sources such as Getty Images); Jennifer Cunningham Report of Investigation ("ROI") at 2. And a side-by-side comparison of the HVEDC and Eldridge advertisements shows that the footage of the 3D printing process in each of the two advertisements is not identical.

1 The investigation confirmed that the Committee's media vendor and producer of the
2 "Why I'm Running" advertisement, SKDKnickerbocker, Inc. ("SKDK"), obtained the footage
3 free of charge directly from HVEDC and used portions of that footage in the approximately
4 three-minute advertisement.⁶ HVEDC states that it offered the raw footage free of charge to its
5 3D printing business partners and that SKDK would have received the footage directly from
6 HVEDC.⁷ SKDK partner Jennifer Cunningham was involved with the production of the "Why
7 I'm Running" advertisement. She explained in an interview that SKDK "received video
8 interview footage of [Gottlieb]" that was two minutes and one second long and SKDK ultimately
9 incorporated approximately 17 seconds of that footage into the advertisement.⁸ Overall, the
10 "Why I'm Running" advertisement cost \$67,450 to produce, including a location shoot and
11 production of the video.⁹ Of that amount, Cunningham attributed \$45,000 to a two-day video
12 shoot at locations throughout the congressional district with approximately a 10 person
13 production crew, along with lighting, camera, and sound engineers.¹⁰

⁶ Eldridge, Committee, and HVEDC RTB Resp. at 3 ("Joint RTB Resp.") (May 6, 2016). The Committee stated that it did not receive the footage itself, but we determined that SKDK obtained the footage on its behalf. *Id.*; Jennifer Cunningham Aff. ¶ 6; Report of Investigation for Jennifer Cunningham ("Cunningham ROI") at 1 (Oct. 26, 2016).

⁷ See Joint RTB Resp. at 3 and Gottlieb Aff. ¶ 6, 8; Ltr. from Marc Elias at 2 (Sept. 9, 2016). It appears that although a professional media production company had produced the footage, SKDK did not obtain it directly from that company but rather obtained the footage from HVEDC. See *infra* at 5-7; see also Jeremy Ellenbogen Aff. ¶ 8 (stating that Ellenbogen provided the footage to HVEDC).

⁸ Cunningham Aff. ¶ 2, 6. Cunningham stated that she did "not have any contemporaneous notes or e-mails documenting" how SKDK obtained the footage from HVEDC. *Id.* ¶ 7.

⁹ E-mail from Danielle Friedman, Esq. (Dec. 5, 2016 8:05 am) (attaching SKDK invoice); Cunningham Aff. ¶ 9.

¹⁰ Cunningham ROI at 2-3. Cunningham explained that the footage from the two-day shoot was used for five additional campaign advertisements other than the "Why I'm Running" advertisement. Cunningham Aff. ¶ 4.

1 According to Cunningham, the Gottlieb footage was important to the campaign
2 announcement as it served as a demonstration of Eldridge's business experience.¹¹ The final
3 version of the advertisement includes footage shot at various different locations and interviews
4 with a number of individuals who benefitted from the services of Eldridge's company, Hudson
5 River Ventures.¹² The Gottlieb footage that the Committee obtained from HVEDC is the only
6 portion of the advertisement relating to Eldridge's 3D manufacturing investments.¹³ It appears
7 that SKDK had not filmed comparable footage during its two-day shoot for the campaign.
8 Cunningham explained that SKDK was able to easily incorporate the portion of the Gottlieb
9 footage into the advertisement without needing to make any corrections to it,¹⁴ and that use of
10 that footage saved the Eldridge campaign the costs associated with creating such footage
11 themselves.¹⁵ Based on her expertise in the field, Cunningham estimated that the cost to produce
12 similar interview footage, including the expense of hiring a full union crew and using
13 professional lighting and camera equipment, would be \$10,000 for a shoot at the lowest
14 production value.¹⁶

¹¹ *Id.* ¶ 6, Cunningham ROI at 2.

¹² *See Sean Eldridge: Why I'm Running*, SEAN ELDRIDGE YOUTUBE CHANNEL (Sept. 22, 2013),
<https://www.youtube.com/watch?v=FKsq4d889lk>.

¹³ *Id.* A review of campaign advertisements available on the Committee's YouTube page confirms that the Committee did not include footage of Gottlieb or anyone else associated with the HVEDC 3D printing project in any other advertisements released by the campaign.

¹⁴ Cunningham Aff. ¶ 8; Cunningham ROI at 2.

¹⁵ Cunningham ROI at 2.

¹⁶ *Id.* at 2.

1 Notwithstanding the fact that the footage was shot in front of a green screen typically
2 used in professional settings requiring specific lighting,¹⁷ Respondents, in response to the reason
3 to believe findings, described the footage as “amateur” footage and asserted that it was shot for
4 free by a volunteer¹⁸ who had produced other videos for HVEDC’s projects free of charge. They
5 argued, therefore, that the footage had no value.¹⁹ Contrary to Respondents’ assertion, publicly
6 available information discovered during the investigation showed that a professional media

¹⁷ Cunningham Aff. ¶ 8; Cunningham ROI at 2. “A green screen allows filmmakers to superimpose anything or anyone into a photo or video.” See <https://www.reference.com/technology/green-screen-6dcbd2cf55d57af7#>.

¹⁸ Joint RTB Resp. at 1, 2 and Attach; Gottlieb Aff. ¶ 3-4. Respondents stated that the volunteer “produced multiple videos throughout 2014” for free. Joint RTB Resp. at 1. HVEDC’s YouTube Channel shows multiple videos uploaded in 2013 and 2014, some of which relate to the 3D printing project. See HudsonValleyEDC YouTube Channel, <https://www.youtube.com/user/HudsonValleyEDC/videos>.

¹⁹ Respondents also argued that the footage had no value because it was publicly available on the company’s YouTube channel, and it was aired at a free public event at the State University of New York at New Paltz on May 30, 2013, approximately three months before the “Why I’m Running” advertisement aired. HVEDC Resp. at 3 (May 1, 2014); Comm. Resp. at 3 (May 1, 2014); Gottlieb Aff. ¶ 6; Letter from Marc E. Elias at 1 (Sept. 9, 2016). However, these were final edited versions of the advertisement and not the unedited footage. See HudsonValleyEDC YouTube Channel, <https://www.youtube.com/user/HudsonValleyEDC/videos>. HVEDC also stated that it offered the 3D printing video “free of charge to a number of entities,” but upon further clarification we determined that the raw footage was offered only to the project business partners. As discussed further *infra*, Ellenbogen Creative Media provided footage from the 3D printing video free of charge to HVEDC, the Central Hudson Gas & Electric Company, and SUNY New Paltz. Jeremy Ellenbogen Aff. ¶ 8. HVEDC “offered [the footage], verbally, to anyone who appeared in the video in order for all the partners to share in the public relations benefits from this announcement.” Letter from Marc E. Elias at 2 (Sept. 9, 2016). According to the Respondents, HVEDC would have also provided the footage to anyone else at no charge “if asked,” but no one else asked for it. Joint RTB Resp. at 2; Letter from Marc E. Elias at 2 (Sept. 9, 2016); Gottlieb Aff. ¶ 7.

1 company, Ellenbogen Creative Media ("Ellenbogen"),²⁰ produced the HVEDC footage.²¹ A blog
2 post on the Ellenbogen website indicates that a crew of people worked on the advertisement; the
3 blog post describes the work of the "Ellenbogen crew" in connection with the 3D printing
4 advertisement, including conducting Gottlieb's interview, collaborating with marketing firm
5 Focus Media, and using editors, cinematographers, and an audio technician.²² And in an
6 interview testimonial regarding his experience with Ellenbogen, Gottlieb refers to working with
7 the Ellenbogen "crew" and working with a "professional team" at Ellenbogen in connection with
8 HVEDC advertisements.²³

9 In response to the information that a professional media company, and not an amateur,
10 produced the footage, Respondents submitted an explanation and an affidavit from Jeremy
11 Ellenbogen, President and CEO of Ellenbogen.²⁴ Mr. Ellenbogen explains that he "volunteered

²⁰ Ellenbogen, a media production company headquartered in Kingston, New York, describes itself as "a full service production house" with over 25 years of experience and "one of the largest production facilities in the Hudson Valley handling everything from multi camera shoots and webcasting services to shooting live press conferences and in-studio product promotion." *See Our Company*, ELLENBOGEN CREATIVE MEDIA WEBSITE, <http://ellenbogenmedia.com/our-company/>.

²¹ It appears that Ellenbogen produced a number of promotional videos for HVEDC, including the 3D printing announcement that incorporated the Gottlieb interview footage at issue in this matter. *See* <http://ellenbogenmedia.com/ellenbogen-group-steps-into-another-dimension/> (describing the 3D printing initiative and featuring related promotional videos produced by Ellenbogen); <http://ellenbogenmedia.com/client-testimonials/> and <http://ellenbogenmedia.com/client-testimonials/corporate-audio-video-services/> (featuring Larry Gottlieb in a client testimonial video); <https://vimeo.com/84971600> and <https://vimeo.com/92965834>; *Hudson Valley Advanced Manufacturing Center at SUNY New Paltz 3D Printing*, ELLENBOGEN CREATIVE MEDIA VIMEO (uploaded Jan. 24, 2014), <https://vimeo.com/84971600> (describing the promotional video as a "web commercial for [HVEDC] created by Ellenbogen").

²² *See* <http://ellenbogenmedia.com/ellenbogen-group-steps-into-another-dimension/> (describing the company's role in production of the announcement and launch event for the 3D printing partnership). Focus Media is a marketing firm that lists HVEDC and Central Hudson (*i.e.*, another one of the 3D printing partners) as clients. *See* <http://www.focusmediausa.com/clients/>.

²³ *See* <http://ellenbogenmedia.com/client-testimonials/corporate-audio-video-services/>.

²⁴ *See* Jeremy Ellenbogen Aff. ¶ 1; *Our Team*, ELLENBOGEN WEBSITE, <http://ellenbogenmedia.com/our-team/>. Mr. Ellenbogen also sits on the board of HVEDC, along with Eldridge. *See Board of Directors*, HVEDC WEBSITE, <http://www.hvedc.com/about-hvedc/board-of-directors/> (last accessed Jan. 17, 2018).

1 to produce a promotional video related to the development of 3D printing in the Hudson Valley,”
2 and that it was produced on a “pro bono basis” for HVEDC.²⁵ He states that the company has
3 produced videos free of charge for HVEDC in the past as well as for other entities as a way to
4 promote its video production services. Mr. Ellenbogen estimates that the company would have
5 charged from \$7,000 to \$10,000 to produce the HVEDC 3D printing video from May 2013 in its
6 entirety, including filming and editing costs.²⁶

7 IV. LEGAL ANALYSIS

8 The Act prohibits corporations from making contributions and prohibits candidates and
9 committees from knowingly accepting or receiving a prohibited contribution.²⁷ Contributions
10 include “anything of value” made for the purpose of influencing a federal election,²⁸ and the term
11 anything of value includes all in-kind contributions.²⁹ The Commission has considered video
12 footage a thing of value for purposes of the Act.³⁰ The provisions of any goods or services
13 without charge or at a charge that is less than the usual and normal charge for such goods or
14 services is a contribution.³¹ Commission regulations define “usual and normal charge” as “the

²⁵ Ellenbogen Aff. ¶¶ 2-3.

²⁶ *Id.* ¶¶ 4-6, 10.

²⁷ 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b).

²⁸ 11 C.F.R. § 100.52(a).

²⁹ 11 C.F.R. § 100.52(d)(1).

³⁰ See, e.g., First Gen. Counsel's Rpt. at 7-8 and Statement of Reasons, Comm'rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2, MUR 5964 (Schock for Congress) (video footage is a campaign asset and thing of value requiring payment at the usual and normal charge); F&LA at 10-11, MUR 6218 (Ball4NY) (video footage is a campaign asset that would have value).

³¹ 11 C.F.R. § 100.52(d)(1).

1 price of those goods in the market from which they ordinarily would have been purchased at the
2 time of the contribution,"³² *i.e.*, the fair market value.³³

3 The investigation in this matter shows that Ellenbogen, a company in the video
4 production business, provided its professional services and resources to create the Gottlieb
5 footage for HVEDC (a corporation).³⁴ HVEDC, in turn, provided the footage to the Eldridge
6 campaign for use in its "Why I'm Running" campaign advertisement without charge.³⁵ Under
7 the circumstances here, where the Committee did not pay for the right to use the video footage,
8 HVEDC made and the Committee accepted, a prohibited in-kind corporate contribution in the
9 form of video footage, in violation of 52 U.S.C. § 30118(a).³⁶

10 Additionally, the Act requires committee treasurers to file reports of receipts and
11 disbursements.³⁷ These reports must include, *inter alia*, the identification of each person who

³² 11 C.F.R. § 100.52(d)(2).

³³ See, e.g., First Gen. Counsel's Rpt. at 4-6, MUR 5682 (Bachman for Congress) (finding there was no prohibited corporate contribution in connection with committee's receipt of a mailing list where the committee paid for the purchase of the list and the purchase amount was determined after consulting with a reputable list broker regarding the "proper fair market value" of the list); Advisory Opinion 2010-30 (Citizens United) (concluding that there would be no violations of the prohibitions against corporations coordinating expenditures with federal candidates if Citizens United rents its email subscriber list to federal candidates at the "fair market price" of renting such lists, which would be the "usual and normal charge"). Similarly, in MUR 5964 (Schock for Congress), where the committee used video footage of the candidate from his state campaign in advertisements for his federal campaign, the Commission examined the amount that the campaign paid to a vendor owning the footage for use of the relevant footage. See Statement of Reasons, Comm'rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2, MUR 5964 (Schock for Congress); see also F&LA at 11, MUR 6218 (Ball4NY) (finding no reason to believe with regard to transferred assets where supporting documentation was provided showing committee purchased rights to use photographs at issue).

³⁴ See HVEDC Resp. at 3 (noting that Complaint correctly stated that the Gottlieb footage was "clearly the property of HVEDC"); Ellenbogen Aff. ¶ 3 (stating that Ellenbogen produced the 3D printing video for HVEDC).

³⁵ Ltr. from Marc E. Elias at 1-2 (Dec. 20, 2017); Ellenbogen Aff. ¶ 2.

³⁶ See, e.g., F&LA at 4-6, MUR 5480 (Levetan for Congress) (making reason to believe findings where a state campaign committee transferred polling data to the federal campaign committee without payment).

³⁷ 52 U.S.C. § 30104(b).

1 makes a contribution or contributions that have an aggregate amount or value in excess of \$200
2 during an election cycle, in the case of an authorized committee of a federal candidate, together
3 with the date and amount of any such contribution.³⁸ Since the Committee accepted the in-kind
4 contribution, that contribution should have been, but was not, included in its disclosure reports
5 filed with the Commission. Therefore, we recommend that the Commission find reason to
6 believe that the Committee violated 52 U.S.C. § 30104(b) by failing to disclose the receipt of the
7 video footage from HVEDC on its disclosure reports.

³⁸ *Id.* § 30104(b)(3)(A).

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VI. RECOMMENDATIONS

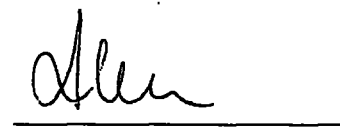
1. Find reason to believe that Sean Eldridge for Congress and Michael Oates in his official capacity as treasurer violated 52 U.S.C. § 30104(b).
2. Enter into conciliation with Sean Eldridge, Sean Eldridge for Congress and Michael Oates in his official capacity as treasurer, and Hudson Valley Economic Development Corporation prior to a finding of probable cause to believe.
3. Approve the attached Factual and Legal Analysis.
4. Approve the attached Conciliation Agreements.
5. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

4/6/18
Date


Kathleen Guith
Associate General Counsel


Lynn Tran
Assistant General Counsel


Ana J. Peña-Wallace
Attorney

Attachments:

1. Factual and Legal Analysis for the Committee

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Sean Eldridge for Congress and **MUR: 6792**
5 Michael Oates in his official capacity
6 as treasurer
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8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission
10 (the "Commission") and based on information ascertained by the Commission in the normal
11 course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(1),(2). The
12 Commission previously found reason to believe that Sean Eldridge for Congress and Michael
13 Oates in his official capacity as treasurer (the "Committee") violated 52 U.S.C. § 30118(a) by
14 accepting an in-kind contribution, in the form of video footage, that belonged to Hudson Valley
15 Economic Development Corporation ("HVEDC") and was provided to the campaign free of
16 charge.¹ The footage at issue was of HVEDC President and CEO Laurence Gottlieb that had
17 been used months earlier in an HVEDC advertisement.² The Commission now finds reason to
18 believe that the Committee violated 52 U.S.C. § 30104(b) by failing to disclose the receipt of that
19 video footage from HVEDC as a contribution on its disclosure reports.

¹ *See* Certification, MUR 6792 (Sean Eldridge) (Apr. 28, 2016).

² *See* Factual and Legal Analysis for Committee ("2016 Committee F&LA") at 3-4, MUR 6792.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The investigation in this matter determined that the Eldridge campaign used footage in its
3 “Why I’m Running” advertisement³ that belonged to HVEDC and that was provided at no cost to
4 the campaign.⁴ The unedited footage that the Committee obtained from HVEDC is two minutes
5 long and shows Gottlieb in front of a green-colored screen delivering scripted lines to the
6 camera; Gottlieb stops and restarts four times on camera before delivering an error-free version
7 of his lines.⁵ According to Jennifer Cunningham, a partner with the Committee’s media firm
8 SKDKnickerbocker, Inc. (“SKDK”), the Gottlieb footage was important to the campaign
9 announcement as it served as a demonstration of Eldridge’s business experience.⁶

³ See *Sean Eldridge: Why I’m Running*, SEAN ELDRIDGE YOUTUBE CHANNEL (Sept. 22, 2013), <https://www.youtube.com/watch?v=FKsq4d889lk>. As described in the F&LA, the “Why I’m Running” advertisement served as a campaign announcement and biographical introduction of Eldridge that focused on his business experience, including his role as founder and President of Hudson River Ventures and co-founder of the Hudson Valley Advanced Manufacturing Center at SUNY New Paltz and its 3D printing initiative. See 2016 Committee F&LA at 2-4, MUR 6792.

⁴ See Certification, MUR 6792 (Sean Eldridge) (Apr. 28, 2016).

⁵ At the reason to believe stage it appeared that the amount of footage the Eldridge campaign may have received from HVEDC was larger because Eldridge’s advertisement also contained footage of 3D printing process that appeared similar to the footage that was used in HVEDC’s own advertisement. 2016 Committee F&LA at 9. The investigation shows, however, that the footage of the 3D printing process used in the Eldridge advertisement was stock footage obtained through online sources and was not footage that belonged to HVEDC. Jennifer Cunningham Aff. ¶ 5 (explaining that the media firm that created the advertisement obtained the stock footage through online sources such as Getty Images); Jennifer Cunningham Report of Investigation (“ROI”) at 2. And a side-by-side comparison of the HVEDC and Eldridge advertisements shows that the footage of the 3D printing process in each of the two advertisements is not identical.

⁶ Cunningham Aff. ¶ 6, Cunningham ROI at 2.

1 The investigation found that a professional media company, Ellenbogen Creative Media
2 (“Ellenbogen”),⁷ produced the HVEDC footage.⁸ SKDK, which produced the “Why I’m
3 Running” advertisement, obtained the footage of Gottlieb free of charge directly from HVEDC
4 and used portions of that footage in the approximately three-minute campaign advertisement.
5 The Act requires committee treasurers to file reports of receipts and disbursements.⁹ These
6 reports must include, *inter alia*, the identification of each person who makes a contribution or
7 contributions that have an aggregate amount or value in excess of \$200 during an election cycle,
8 in the case of an authorized committee of a federal candidate, together with the date and amount
9 of any such contribution.¹⁰ Contributions include “anything of value” made for the purpose of
10 influencing a federal election,¹¹ and the term anything of value includes all in-kind
11 contributions.¹² The Commission has considered video footage a thing of value for purposes of

⁷ Ellenbogen, a media production company headquartered in Kingston, New York, describes itself as “a full service production house” with over 25 years of experience and “one of the largest production facilities in the Hudson Valley handling everything from multi camera shoots and webcasting services to shooting live press conferences and in-studio product promotion.” See *Our Company*, ELLENBOGEN CREATIVE MEDIA WEBSITE, <http://ellenbogenmedia.com/our-company/>.

⁸ It appears that Ellenbogen produced a number of promotional videos for HVEDC, including the 3D printing announcement that incorporated the Gottlieb interview footage at issue in this matter. See <http://ellenbogenmedia.com/ellenbogen-group-steps-into-another-dimension/> (describing the 3D printing initiative and featuring related promotional videos produced by Ellenbogen); <http://ellenbogenmedia.com/client-testimonials/> and <http://ellenbogenmedia.com/client-testimonials/corporate-audio-video-services/> (featuring Larry Gottlieb in a client testimonial video); <https://vimeo.com/84971600> and <https://vimeo.com/92965834>; *Hudson Valley Advanced Manufacturing Center at SUNY New Paltz 3D Printing*, ELLENBOGEN CREATIVE MEDIA VIMEO (uploaded Jan. 24, 2014), <https://vimeo.com/84971600> (describing the promotional video as a “web commercial for [HVEDC] created by Ellenbogen”).

⁹ 52 U.S.C. § 30104(b).

¹⁰ *Id.* § 30104(b)(3)(A).

¹¹ 11 C.F.R. § 100.52(a).

¹² 11 C.F.R. § 100.52(d)(1).

1 the Act.¹³ The provisions of any goods or services without charge or at a charge that is less than
2 the usual and normal charge for such goods or services is a contribution.¹⁴ Commission
3 regulations define “usual and normal charge” as “the price of those goods in the market from
4 which they ordinarily would have been purchased at the time of the contribution,”¹⁵ *i.e.*, the fair
5 market value.¹⁶

6 Here, the Committee accepted a prohibited in-kind corporate contribution in the form of
7 video footage that HVEDC provided to the Committee free of charge, in violation of 52 U.S.C.
8 § 30118(a).¹⁷ Ellenbogen, a company in the video production business, provided its professional
9 services and resources to create the Gottlieb footage for HVEDC (a corporation), who in turn
10 provided the footage to the Eldridge campaign for use in its “Why I’m Running” campaign
11 advertisement without charge. Since the Committee accepted the in-kind contribution, that
12

¹³ See, e.g., First Gen. Counsel’s Rpt. at 7-8 and Statement of Reasons, Comm’rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2, MUR 5964 (Schock for Congress) (video footage is a campaign asset and thing of value requiring payment at the usual and normal charge); F&LA at 10-11, MUR 6218 (Ball4NY) (video footage is a campaign asset that would have value).

¹⁴ *Id.*

¹⁵ 11 C.F.R. § 100.52(d)(2).

¹⁶ See, e.g., First Gen. Counsel’s Rpt. at 4-6, MUR 5682 (Bachman for Congress) (finding there was no prohibited corporate contribution in connection with committee’s receipt of a mailing list where the committee paid for the purchase of the list and the purchase amount was determined after consulting with a reputable list broker regarding the “proper fair market value” of the list); Advisory Opinion 2010-30 (Citizens United) (concluding that there would be no violations of the prohibitions against corporations coordinating expenditures with federal candidates if Citizens United rents its email subscriber list to federal candidates at the “fair market price” of renting such lists, which would be the “usual and normal charge”). Similarly, in MUR 5964 (Schock for Congress), where the committee used video footage of the candidate from his state campaign in advertisements for his federal campaign, the Commission examined the amount that the campaign paid to a vendor owning the footage for use of the relevant footage. See Statement of Reasons, Comm’rs Bauerly, Hunter, Peterson, Walther and Weintraub at 2, MUR 5964 (Schock for Congress); see also F&LA at 11, MUR 6218 (Ball4NY) (finding no reason to believe with regard to transferred assets where supporting documentation was provided showing committee purchased rights to use photographs at issue).

¹⁷ See, e.g., F&LA at 4-6, MUR 5480 (Levetan for Congress) (making reason to believe findings where a state campaign committee transferred polling data to the federal campaign committee without payment).

1 contribution should have been, but was not, included in its disclosure reports filed with the
2 Commission. Therefore, the Commission finds reason to believe that the Committee violated
3 52 U.S.C. § 30104(b) by failing to disclose the receipt of the video footage from HVEDC on its
4 disclosure reports.

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